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[Title 26, Volume 2, Part 1 (Sections 1.61 to 1.169)]  
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[Page 410-412]

TITLE 26--INTERNAL REVENUE

(CONTINUED)

COMPUTATION OF TAXABLE INCOME--Table of Contents

Sec. 1.104-1 Compensation for injuries or sickness.

(a) In general. Section 104(a) provides an exclusion from gross income with respect to certain amounts described in paragraphs (b), (c), (d) and (e) of this section, which are received for personal

[[Page 411]]

injuries or sickness, except to the extent that such amounts are attributable to (but not in excess of) deductions allowed under section 213 (relating to medical, etc., expenses) for any prior taxable year. See section 213 and the regulations thereunder.

(b) Amounts received under workmen's compensation acts. Section 104(a)(1) excludes from gross income amounts which are received by an employee under a workmen's compensation act (such as the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C., c. 18), or under a statute in the nature of a workmen's compensation act which provides compensation to employees for personal injuries or sickness incurred in the course of employment. Section 104(a)(1) also applies to compensation which is paid under a workmen's compensation act to the survivor or survivors of a deceased employee. However, section 104(a)(1) does not apply to a retirement pension or annuity to the extent that it is determined by reference to the employee's age or length of service, or the employee's prior contributions, even though the employee's retirement is occasioned by an occupational injury or sickness. Section 104(a)(1) also does not apply to amounts which are received as compensation for a nonoccupational injury or sickness nor to amounts received as compensation for an occupational injury or sickness to the extent that they are in excess of the amount provided in the applicable workmen's compensation act or acts. See, however, Secs. 1.105-1 through 1.105-5 for rules relating to exclusion of such amounts from gross income.

(c) Damages received on account of personal injuries or sickness. Section 104(a)(2) excludes from gross income the amount of any damages received (whether by suit or agreement) on account of personal injuries or sickness. The term ``damages received (whether by suit or agreement)'' means an amount received (other than workmen's compensation) through prosecution of a legal suit or action based upon tort or tort type rights, or through a settlement agreement entered into in lieu of such prosecution.

(d) Accident or health insurance. Section 104(a)(3) excludes from gross income amounts received through accident or health insurance for personal injuries or sickness (other than amounts received by an

employee, to the extent that such amounts (1) are attributable to contributions of the employer which were not includible in the gross income of the employee, or (2) are paid by the employer). Similar treatment is also accorded to amounts received under accident or health plans and amounts received from sickness or disability funds. See section 105(e) and Sec. 1.105-5. If, therefore, an individual purchases a policy accident or health insurance out of his own funds, amounts received thereunder for personal injuries or sickness are excludable from his gross income under section 104(a)(3). See, however, section 213 and the regulations thereunder as to the inclusion in gross income of amounts attributable to deductions allowed under section 213 for any prior taxable year. Section 104(a)(3) also applies to amounts received by an employee for personal injuries or sickness from a fund which is maintained exclusively by employee contributions. Conversely, if an employer is either the sole contributor to such a fund, or is the sole purchaser of a policy of accident or health insurance for his employees (on either a group or individual basis), the exclusion provided under section 104(a)(3) does not apply to any amounts received by his employees through such fund or insurance. If the employer and his employees contribute to a fund or purchase insurance which pays accident or health benefits to employees, section 104(a)(3) does not apply to amounts received thereunder by employees to the extent that such amounts are attributable to the employer's contributions. See Sec. 1.105-1 for rules relating to the determination of the amount attributable to employer contributions. Although amounts paid by or on behalf of an employer to an employee for personal injuries or sickness are not excludable from the employee's gross income under section 104(a)(3), they may be excludable therefrom under section 105. See Secs. 1.105-1 through 1.105-5, inclusive. For treatment of accident or health benefits paid to or on behalf of a self-employed

[[Page 412]]

individual by a trust described in section 401(a) which is exempt under section 501(a) or under a plan described in section 403(a), see paragraph (g) of Sec. 1.72-15.

(e) Amounts received as pensions, etc., for certain personal injuries or sickness. (1) Section 104(a)(4) excludes from gross income amounts which are received as a pension, annuity, or similar allowance for personal injuries or sickness resulting from active service in the armed forces of any country, or in the Coast and Geodetic Survey, or the Public Health Service. For purposes of this section, that part of the retired pay of a member of an armed force, computed under formula No. 1 or 2 of 10 U.S.C. 1401, or under 10 U.S.C. 1402(d), on the basis of years of service, which exceeds the retired pay that he would receive if it were computed on the basis of percentage of disability is not considered as a pension, annuity, or similar allowance for personal injury or sickness, resulting from active service in the armed forces of any country, or in the Coast and Geodetic Survey, or the Public Health Service (see 10 U.S.C. 1403 (formerly 37 U.S.C. 272(h)), section 402(h) of the Career Compensation Act of 1949)). See paragraph (a)(3)(i)(a) of Sec. 1.105-4 for the treatment of retired pay in excess of the part computed on the basis of percentage of disability as amounts received through a wage continuation plan. For the rules relating to certain reduced uniformed services retirement pay, see paragraph (c)(2) of Sec. 1.122-1. For rules relating to a waiver by a member or former member of the uniformed services of a portion of disability retired pay

in favor of a pension or compensation receivable under the laws administered by the Veterans Administration (38 U.S.C. 3105), see Sec. 1.122-1(c)(3). For rules relating to a reduction of the disability retired pay of a member or former member of the uniformed services under the Dual Compensation Act of 1964 (5 U.S.C. 5531) by reason of Federal employment, see Sec. 1.122-1(c)(4).

(2) Section 104(a)(4) excludes from gross income amounts which are received by a participant in the Foreign Service Retirement and Disability System in a taxable year of such participant ending after September 8, 1960, as a disability annuity payable under the provisions of section 831 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1081; 60 Stat. 1021). However, if any amount is received by a survivor of a disabled or incapacitated participant, such amount is not excluded from gross income by reason of the provisions of section 104(a)(4).

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 6722, 29 FR 5070, Apr. 14, 1964; T.D. 7043, 35 FR 8477, June 2, 1970]